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Greater Boston Legal Services

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December 15, 1997

Cynthia L. Johnson, Director
Cash Management Policy and Planning Division
Financial Management Service
Department of the Treasury
401 14th Street S.W.
Washington, D.C. 20227

RE: Comments - Notice of Proposed Rulemaking
Implementation of "EFT 99"
Management of Federal Agency Disbursements
62 Fed. Reg. 48714 - 48726 (September 16, 1997).

Dear Ms. Johnson:

We write to express our concerns about the harmful impact of the above referenced proposed regulations on many individuals with disabilities who have low incomes and receive Social Security or Supplemental Security Income (SSI) disability benefits. The Disability Law Center is a private, nonprofit agency that provides free legal assistance to individuals with disabilities throughout Massachusetts. Since 1983, the Disability Benefits Project at the Disability Law Center has provided technical advice and support to legal services advocates and to private attorneys engaged in Social Security and SSI law practice. Greater Boston Legal Services (GBLS) is the oldest and largest legal services program in Massachusetts providing free legal assistance to individuals with low incomes. GBLS advocates have long provided representation on Social Security and SSI matters. The undersigned have substantial experience in these areas.

EFT #109

We submit the following comments based on our experience and on behalf of those we serve. The individuals we serve are low income applicants and recipients of Social Security and SSI benefits. Many have a combination of physical and mental impairments. Many are not literate or speak a language other than English. The proposed regulations present significant barriers to many of this population and are inconsistent with the stated goals of Congress for implementation of "EFT 99:"

- . making certain that recipients have access to their funds at a reasonable cost;
- . providing appropriate consumer protection;
- . ensuring that the system delivers payments and information accurately, conveniently, and in a timely manner; and
- . significantly increasing participation by recipients in the country's financial system.

62 Fed. Reg. 48,714(9/16/97). We are primarily concerned about the Treasury Department's failure to regulate all accounts and failure to provide for adequate waivers.

The proposed regulations require all "unbanked" federal benefits recipients to establish accounts for electronic fund transfer of their benefits. Social Security and SSI benefits recipients are already being pressured into establishing accounts for direct deposit of their benefits, and Treasury plans an extensive public education campaign to encourage the establishment of accounts. Yet, only those who do not establish accounts on their own will have the advantage of the strictly regulated accounts that Treasury will establish. Treasury must regulate all accounts established for the purpose of complying with these regulations. Only federally insured financial institutions -- banks, credit unions and savings associations -- should be permitted to be conduits for federal moneys. This would mean that partnering between a check casher and a bank would not be permitted. As it stands, Treasury's regulations permit deposit of federal benefits into accounts at financial institutions that are effectively accessible only through fringe bankers. We fear that federal benefits recipients are at risk of victimization by fringe bankers and other financial services when forced to open accounts in order to receive federal benefits. Low income consumers are not

avored customers and may find themselves with limited access and high banking costs relative to their income without regulation. Treasury must amend the proposed regulations to ensure that:

- federal payments are routed only through federally supervised, regulated banks, savings institutions and credit unions;
- recipients are able to access their money directly through these supervised and regulated banks, savings institutions and credit unions in their neighborhoods, as well as other locations of their choosing;
- the costs for these accounts are reasonable both at the time they are established and over time;
- federally established consumer protections apply; and
- those who established accounts on their own will also have access to the strictly regulated accounts that Treasury will establish.

These amendments to the proposed regulations are required to accomplish the goals of Congress for implementation of "EFT 99" for low income federal benefits recipients.

We are also greatly concerned about the limited list of waivers available for the account requirement. The waivers included in section 208.4 of the proposed regulations exclude a significant portion of the people we serve. We provide legal assistance to individuals with physical impairments, mental impairments, or a combination of physical and mental impairments. The proposed regulations offer waivers to individuals who certify "that payment by electronic funds transfer would impose a hardship on him or her due to a physical disability or geographic barrier." 62 Fed. Reg. 48,718(9/16/97). There is no consideration for those with mental impairments or for those who are not literate or fluent in English. Instead, Treasury casually dismisses this group by stating that:

...mental, educational, and language [barriers]- do not pose a barrier to the use of EFT. These factors can affect an individual's ability to use any method of payment, whether check or EFT, and, therefore, there is no need to provide waivers for these categories.

62 Fed. Reg. 48,718(9/16/97). This statement shows a misunderstanding of how individuals with mental impairments, limited education, and lack of fluency in English function in their communities. Treasury's blanket exclusion of these groups is unconscionable.

Treasury seems to assume that all Social Security and SSI disability benefits recipients with mental impairments receive their benefits through a representative payee appointed by the agency. This is not the case. Only those shown to be unable to manage their benefits in their own best interests. The lack of a waiver for those whose mental impairments prevent them accessing their benefits electronically will have the effect of requiring them to receive their benefits through a representative payee. This would result in an extremely burdensome requirement that unnecessarily limits the rights of recipients and is also facially discriminatory towards those with mental impairments. Our clients with mental impairments may be able to function and manage their money because of the ongoing relationship they have with the bank-teller, or the grocer or the landlord. However, if they are faced with an ATM machine which offers no oral instructions, and they can only access their money by pressing buttons on a key-pad, many may not be able to perform this task due to cognitive limitations, anxiety, or language issues. Requiring them to receive their benefits through a representative payee because they can use a "paper system" but cannot access benefits electronically, hurts these recipients, violates the principle that Social Security and SSI benefits recipients are entitled to receive and manage their own benefits, and puts even greater strain on Social Security's already stretched representative payee resources.

The Social Security Administration has already recognized mental impairments and language problems (e.g., lack of fluency in English) as barriers towards working or performing activities of daily living. Social Security awards benefits to people based on a set of criteria which account for the claimant's individual limitations on a case by case basis. The criteria include the person's impairments, age, education, work experience, and language skills (fluency in English). Treasury must also consider educational and language difficulties as potential barriers to accessing payments made by electronic fund transfer. The people we serve utilize various means of cashing their checks, i.e., the person who is not literate or fluent in English can cash his/her check at a bank at which they do not have an account with the assistance of the bank teller. Many who are not literate or fluent

in English will encounter tremendous difficulties in using ATMs simply because they are not able to read, understand or follow the directions on the ATM screen. What seems simple for the average individual may be very difficult for those with mental impairments or those who are not literate or fluent in English.

Certainly, many individuals with mental impairments or language or literacy problems will be able to participate in and benefit from "EFT 99." However, waivers must be available for those capable of managing their benefits in a paper system but not in an electronic system. Waivers should also be made available to those for whom electronic deposit would impose a hardship because of financial difficulties, whether they have a bank account or not. To do otherwise hurts low income federal benefits recipients and impedes the goals of Congress in passing "EFT 99."

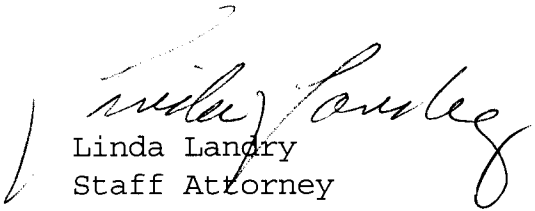
Finally, Treasury's public education campaign may scare some recipients into establishing accounts that are costly or otherwise unfavorable. Individuals with low incomes who have been outside the financial mainstream will be more vulnerable to abusive practices and may not have access to the most beneficial accounts. Significant regulation of consumer costs and access are called for in order to provide protection for this vulnerable population. "EFT 99" should not be a boon to those who would make a profit on the backs of the poor. It is crucial that Treasury's public education campaign not proceed until the proposed regulations are amended to provide more protection and until recipients can be informed of all their choices.


Thank you for the opportunity to comment on these proposed regulations.

Sincerely,

A handwritten signature in cursive script that reads "Taramattie Doucette (iii)".

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